

01  
02  
03  
04  
05                   UNITED STATES DISTRICT COURT  
06                   WESTERN DISTRICT OF WASHINGTON  
07                   AT SEATTLE

08                   UNITED STATES OF AMERICA,                   )  
09                                  Plaintiff,                           ) Case No. CR06-38-RSM-JPD  
10                                  v.                                   )  
11                                  HARMINDER SINGH,                   ) DETENTION ORDER  
12    Defendant.                   )  
13 \_\_\_\_\_)

14 Offenses charged:

15                   Count 1: Conspiracy to Smuggle and Transport Illegal Aliens in violation of 8 U.S.C.  
16                   §§ 1324.

17                   Count 10: Bringing Illegal Alien for Financial Gain in violation of 8 U.S.C.  
18                   § 1324(a)(2)(B)(ii) and 18 U.S.C. § 2.

19                   Count 11: Transporting Illegal Alien in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii),  
20                   1324(a)(1)(A)(v)(II), and 1324 (a)(1)(B)(i).

21 Date of Detention Hearing: June 1, 2006.

22                   The Court, having conducted a detention hearing pursuant to 18 U.S.C. § 3142(f), and  
23 based upon the factual findings and statement of reasons for detention hereafter set forth,  
24 finds the following:

25                   FINDINGS OF FACT AND STATEMENT OF REASONS FOR DETENTION

26                   The question of whether the defendant should be detained has been considered  
previously. At that time, the defendant was charged with alien smuggling in the *United*

01 *States of America v. Singh*, CR 06-91 TSZ. The Honorable Mary Alice Theiler ordered on  
 02 April 17, 2006, that the defendant be detained, finding him to be a risk of flight. Upon  
 03 further review and a subsequent hearing, Judge Theiler reaffirmed her decision on May 11,  
 04 2006, to detain the defendant as a risk of flight.

05 On May 16, 2006, the government dismissed the indictment that was the subject of  
 06 Judge Theiler's detention orders. However, on May 11, 2006, the defendant was charged by  
 07 means of a superceding indictment in this case, *United States of America v. Dehagi, et al.*,  
 08 CR 06-38 RSM, originally filed on February 1, 2006, and subsequently in a second  
 09 superceding indictment returned on May 24, 2006. The defendant made his initial appearance  
 10 in this case on May 25, 2006.

11 At the defendant's initial appearance on the pending charges, the Court determined  
 12 that the defendant was entitled to a *de novo* detention hearing. The hearing on the  
 13 government's motion to detain the defendant took place on June 1, 2006. During the  
 14 argument on detention, the government and the defendant made reference to proffers and  
 15 testimony made during the second detention hearing in CR 06-91. As a result, the  
 16 undersigned Magistrate Judge ordered that the transcript of that hearing be posted and made  
 17 part of this hearing.

18 The defendant is charged in Count 1 with a conspiracy to smuggle and transport  
 19 aliens, namely Indians and Pakistanis, from Canada into the United States. The defendant  
 20 was born in Hamjinpur, India, and came to the United States on a visitor's visa in 1997.  
 21 Shortly after his arrival, he filed an application for political asylum, which was granted,  
 22 because he established that, as a Sikh, he had a well-grounded fear of future persecution or  
 23 had faced past persecution based on his religious beliefs. The defendant has resided in the  
 24 Seattle area for a period of approximately two years. His wife and child remained in India  
 25 until 2005, when they were able to join him. He has been employed as a cab driver.

26 The Bail Reform Act of 1984, 18 U.S.C. § 3145, requires the release of a person

01 facing trial under the least restrictive conditions that will reasonably assure the appearance of  
02 the person as required and the safety of the community. On a motion for pretrial detention,  
03 the government bears the burden of proving by a preponderance of the evidence that the  
04 defendant poses a risk of flight, and by clear and convincing evidence that the defendant  
05 poses a danger to the community. *United States v. Gebro*, 948 F.2d 1118, 1121 (9th Cir.  
06 1991). In this case, the government has not carried its burden of proving that the defendant  
07 poses a danger to the community. The issue before the Court, therefore, is whether the  
08 government has proven by a preponderance of the evidence that the defendant poses a risk of  
09 flight. It is the judgment of the Court that the government has done so, and the defendant will  
10 be detained pending trial in this matter.

11 As discussed above, the defendant is charged with alien smuggling and with a  
12 conspiracy with others to smuggle Indians and Pakistanis from Canada into the United States.  
13 The government claims that approximately fifty (50) illegal aliens have been so smuggled,  
14 which, if true, would indicate a sophisticated trail for bringing aliens into Canada and then  
15 into the United States.

16 If the defendant is convicted of the charges in this case, he could face a mandatory  
17 minimum sentence of three (3) years in prison. Of greater significance is that, based on the  
18 testimony of Mr. Fehlings, Deputy Chief Counsel for Immigration and Customs Enforcement,  
19 if convicted, the defendant would likely be deported following his incarceration, and he  
20 would be unable to be able to renew his asylum status. If this happened, in all probability, he  
21 would be deported to India.

22 The defendant received a grant of political asylum in this country in 1998 as a result  
23 of religious persecution that he either received or was likely to receive in India. He does,  
24 however, still have family members in India. The asylum grant impacts the risk of flight  
25 analysis in two ways. Were it not for the asylum grant and fear of persecution in India, the  
26 defendant would pose a risk of flight to return to India where he still has family and where his

01 wife and child resided until 2005, in order to avoid prosecution for the pending charges.  
02 Because the asylum grant is so old, however, and because the defendant still has family in  
03 India, it is possible that the fear of persecution in India may no longer exist, which would  
04 otherwise serve as a deterrent to the defendant fleeing to India to avoid prosecution. On the  
05 other hand, if the fear of persecution in India still exists, then the defendant knows that if he  
06 is convicted, he will likely be returned to India following any imprisonment. In this case,  
07 then it is probable that the defendant would use the channels allegedly developed in Canada  
08 as part of the alleged smuggling conspiracy to flee this jurisdiction, in order to avoid not just  
09 the possibility of incarceration for the pending charges, but the almost certain deportation to  
10 India following incarceration.

11       The defendant argues that the issue of alienage cannot be used to determine  
12 conclusively that a defendant poses a risk of flight, citing *United States v. Motamedi*, 767  
13 F.2d 1403, 1408 (9th Cir. 1985). However, as the court in *Motamedi* noted, while alienage is  
14 not a conclusive factor, it is one factor that the court can take into account when considering  
15 the risk of flight. In this case, not only is alienage a factor, but the broad-ranging  
16 international conspiracy that is alleged supports the finding that the defendant poses a risk of  
17 flight. In this regard, at the initial hearing before Judge Theiler, Rajpal Padda, a person  
18 unrelated to the defendant, offered to post real property as security to secure the release of the  
19 defendant. At the hearing before the undersigned, the Assistant United States Attorney  
20 proffered that this person has had contact with others involved in the alleged conspiracy,  
21 including the head of the alleged smuggling operations.

22       Because of the near certainty that the defendant would be deported if he is convicted,  
23 he has incentive to flee the country to either India, where he has family and where his wife  
24 and child resided until 2005, or to Canada, to avoid being deported to India if he still fears  
25 persecution there. There are no conditions that would reasonably assure the presence of the  
26 defendant as required if released.

01 IT IS THEREFORE ORDERED:

- 02 (1) Defendant shall be detained pending trial and committed to the custody  
03 of the Attorney General for confinement in a correction facility  
04 separate, to the extent practicable, from persons awaiting or serving  
05 sentences or being held in custody pending appeal;
- 06 (2) Defendant shall be afforded reasonable opportunity for private  
07 consultation with counsel;
- 08 (3) On order of a court of the United States or on request of an attorney for  
09 the government, the person in charge of the corrections facility in  
10 which defendant is confined shall deliver the defendant to a United  
11 States Marshal for the purpose of an appearance in connection with a  
12 court proceeding; and
- 13 (4) The Clerk shall direct copies of this Order to counsel for the United  
14 States, to counsel for the defendant, to the United States Marshal, and  
15 to the United States Pretrial Services Officer.

16 DATED this 2nd day of June, 2006.

17   
18 JAMES P. DONOHUE  
19 United States Magistrate Judge  
20  
21  
22  
23  
24  
25  
26